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October 6, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 05-281; **Amended** Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area

Dear Ms. Dortch:

We hereby submit on behalf of ACS of Anchorage, Inc. ("ACS") an amended version of the above-referenced Petition, originally filed on September 30, 2005. ACS filed errata to the Petition on September 30, 2005 and on October 4, 2005. The corrections in the errata have been incorporated into the attached version.

If you have any questions regarding this matter, please contact the undersigned at (202) 637-1056.

Respectfully submitted,

Elizabeth R. Park

Enclosures

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September 30, 2005

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area

Dear Ms. Dortch:

Enclosed on behalf of ACS of Anchorage, Inc. are an original and nine (9) copies of ACS of Anchorage, Inc.'s Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area Pursuant to Section 10 of the Communications Act of 1934, as amended.

Please stamp and return to me the additional copy provided for that purpose. If you have any questions regarding this matter, please contact me at (202) 637-1056.

Respectfully submitted,

Elizabeth Park

Enclosures

cc: Michelle Carey
Russell Hanser
Jessica Rosenworcel
Scott Bergmann

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of ACS of Anchorage, Inc. Pursuant to	)	
Section 10 of the Communications Act of 1934, as	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

PETITION OF ACS OF ANCHORAGE, INC. FOR FORBEARANCE FROM SECTIONS 251(C)(3) AND 252(D)(1)

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September 30, 2005

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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	)	
Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area	)	WC Docket No. 05-251

PETITION OF ACS OF ANCHORAGE, INC. FOR FORBEARANCE FROM SECTIONS 251(C)(3) AND 252(D)(1)

ACS of Anchorage, Inc. ("ACS"), by its attorneys, hereby petitions the Commission pursuant to Section 10 of the Communications Act of 1934, as amended (the "Act"),[1] to forbear from the unbundling obligations of Section 251(c)(3) of the Act as they apply to ACS's Anchorage, Alaska local exchange carrier ("LEC") study area,[2] and the application of the related Section 252(d)(1) pricing standards for unbundled network elements ("UNEs")[3] to the extent ACS chooses to continue to offer UNEs in Anchorage.[4]

I. INTRODUCTION AND SUMMARY

ACS is the incumbent local exchange carrier ("ILEC") in the Anchorage, Alaska study area, which is among the most competitive telecommunications markets in the country. Since the enactment of the Telecommunications Act of 1996, ACS's local exchange market share in Anchorage has fallen from nearly 100 percent to less than 50 percent. ACS's chief

[1] 47 U.S.C. § 160.

[2] Map of Anchorage Study Area, attached hereto as Exhibit C.

[3] If the Commission finds that forbearance from the unbundling requirements of Section 251(c)(3) is warranted, then the Section 252(d)(1) pricing standards for UNEs would be inapplicable. ACS also incorporates by reference the UNE requirements set forth in Section 51.319 of the Commission's rules, and all other regulations giving carriers rights to UNEs at regulated rates, adopted pursuant to Sections 251(c)(3) and 252(d)(1) of the Act.

[4] As used herein, when ACS refers to "Anchorage" it is referring to the entire Anchorage study area, which includes some areas beyond the political boundaries of Anchorage.

competitor is General Communication, Inc. ("GCI"), which currently provides local exchange and exchange access service to approximately 49 percent of the Anchorage local exchange market and is capable of providing local exchange and exchange access service over its own facilities by cable, fiber or copper to nearly all of Anchorage.[5] GCI is the largest broadband provider in Alaska, the monopoly cable system operator in Anchorage, and one of two predominant long-distance carriers in the state (along with AT&T Alascom).[6] GCI provides local exchange and exchange access service substantially over its own switched access facilities and has announced plans to convert the entirety of its local exchange service customer base to its own facilities, including its cable plant, which passes nearly every residence and business in Anchorage.[7] GCI's statements make clear that the time frame for moving its customers onto its own facilities is entirely dependent upon the difference in the cost of deploying cable telephony and the below-cost UNE loop rate. There are no barriers to entry in the market.

Though Anchorage enjoys robust facilities-based competition, GCI is the only CLEC that operates using a UNE-based strategy, and at this time, is the only party purchasing

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[5] *In the Matter of Petition by GCI Communications Corp. d/b/a General Communication Inc. and GCI for Arbitration Under Section 252 of the Telecommunications Act of 1996 with the Municipality of Anchorage d/b/a ATU Telecommunications a/k/a ATU Telecommunications for the Purpose of Instituting Local Competition*, RCA Docket No. U-96-89, Prefiled Rebuttal Testimony of Dana Tindall on Behalf of General Communication, Inc. at 5 (filed with the RCA Sept. 29, 2003), attached hereto as Exhibit J ("*Tindall Prefiled Rebuttal Testimony*") (stating that GCI's cable telephony will pass 98% of homes in Anchorage). *See also, In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the FCC's Triennial Review Order on Interconnection Provisions and Policies*, Response of GCI to RCA Order Requesting Data, RCA Docket No. R-03-07(1), at 7, 8, Exhibit GCI-7, Exhibit GCI-8 (Mar. 19, 2004), attached hereto as Exhibit I ("*GCI Data Response*") (demonstrating that GCI has extensive fiber facilities throughout Anchorage).

[6] Statement of Thomas R. Meade on Behalf of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area* at ¶ 6, attached hereto as Exhibit A ("Meade Statement").

[7] GCI Q2 2004 Earnings Call Transcript at 4, 11 (July 28, 2004), attached hereto as Exhibit F.

UNEs affected by this petition for forbearance.[8] As ACS has stated publicly, ACS does not intend to stop offering GCI access to UNEs.[9] If the Commission grants the forbearance requested in this petition, ACS has ample incentive to continue offering network elements to GCI on negotiated, market-based terms in order to maintain the revenue stream.[10] Other competitors have entered the market via resale and ACS does not seek forbearance from its obligations to resellers under the Act.

As the sole purchaser of UNEs in Anchorage, GCI already has demonstrated that it is not impaired without access to UNEs. GCI testified in the Anchorage UNE arbitration hearing that if the Regulatory Commission of Alaska ("RCA") allowed the UNE loop rate to increase, GCI would increase the pace of its facilities deployment.[11] And, in fact, after the RCA increased the UNE loop rate in 2004, GCI accelerated its transition from the ACS UNE loops to its own switched cable telephony plant.[12] Thus, GCI has shown that it is not impaired without access to UNEs, and that it will continue to compete with ACS by building out its own facilities.

As indicated above, forbearance from Sections 251(c)(3) and 252(d)(1) of the Act is warranted in the ACS Anchorage study area for local exchange and exchange access because all of the statutory requirements for forbearance pursuant to Section 10 of the Act have been met

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[8] ACS has interconnection agreements with other carriers that provide for the sale of UNEs; however, none of these carriers have ever purchased UNEs.

[9] *See* Comments of ACS of Anchorage, Inc., *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of ILECs*, WC Docket No. 04-313, CC Docket No. 01-338, at 2-3 (Oct. 4, 2004) ("ACS Remand Comments").

[10] *Id.*

[11] *Tindall Prefiled Rebuttal Testimony* at 3.

[12] GCI Form 10-K (Dec. 31, 2004), at 78; GCI Q2 2004 Earnings Call Transcript at 11; *see also*, Statement of David C. Blessing in Support of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Anchorage LEC Study Area*, at 15-16, attached hereto as Exhibit E ("Blessing Statement").

and mandatory unbundling is no longer necessary. Competitive market forces in Anchorage will ensure that ACS's retail rates and practices remain just, reasonable and nondiscriminatory and that consumers will be protected. Moreover, market forces will offer all carriers in Anchorage more efficient incentives to invest in facilities, thereby allowing carriers to provide consumers with better services and lower rates

In the alternative, however, if the Commission cannot find that Section 251(c)(3) is fully implemented in the Anchorage market, ACS requests that forbearance be granted with respect to GCI. Because GCI and ACS are each able to provide UNEs to their own customers, neither party should have the obligation to provide access to UNEs under Section 251(c)(3) to each other. Due to the competitive market forces that exist in Anchorage, each carrier will have incentives to negotiate reasonable terms of access to their respective networks.

II. SUBSTANTIAL COMPETITION EXISTS IN THE ANCHORAGE LOCAL EXCHANGE MARKET

Anchorage, Alaska is by most measures among the most competitive local telecommunications market in the country. As one Regulatory Commission of Alaska ("RCA") commissioner remarked, "Anchorage's level of competition in the retail local telephone market exceeds that of every other city in the Lower 48 [states] by nearly 20 points."[13] The competition in this market is mature; even two years ago, GCI stated that ACS had only approximately 50% market share and was "arguably no longer dominant."[14] While ACS continues to be regulated as

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[13] *Investigation of the Local Exchange Revenue-Requirement, Depreciation, Cost-of-Service, Rate Design Studies, and Tariff Rate Revisions Designated as TA429-120, TA431-120, and TA457-120 Filed by ACS of Anchorage, Inc.*, Order Granting Reconsideration, in Part; Granting Confidentiality; Making Rates Interim But Not Refundable; Subsuming Issues Into Docket U-01-34, Amending Docket Title; Affirming Electronic Ruling Extending Filing Deadline; and Closing Docket U-09-99, U-01-34(27), Dissenting Statement of Commissioner Kate Giard at 1 (Reg. Comm. of Alaska, Dec. 8, 2003).

[14] *Tindall Prefiled Rebuttal Testimony* at 9.

a dominant local exchange carrier, it currently has interim non-dominant status for intrastate tariffing purposes. Further, the RCA has recently adopted deregulatory measures for most local services in Anchorage based on the high level of competition that exists in that market, and effective in September 2005, ACS will be treated as nondominant in Anchorage with respect to most retail local exchange services.[15]

Market conditions in Anchorage are uniquely oriented to facilities-based competition. According to former FCC Chief Economist, Howard Shelanski, "[f]rom any economic or common-sense perspective, [competition in] the Anchorage local exchange market is a success story."[16] ACS faces competition from several carriers in the Anchorage local exchange services market, including GCI, AT&T Alascom, TelAlaska and several wireless carriers. ACS currently has interconnection agreements with the following LECs in Anchorage: AT&T Alascom, GCI, and TelAlaska, ACS Wireless and Dobson Cellular, the largest independent wireless provider in Alaska.[17] ACS's primary competitor, GCI, already has gained approximately 49 percent of the market and serves many of its customers over its own

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[15] *In the Matter of Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies and Competition in Telecommunications*, Order Adopting Regulations, RCA Docket No. R-03-03 at 18 (June 22, 2005) (available at http:// www.state.ak.us/rca/orders/regs/2003/r03003_14.pdf) (In non-rural markets, such as Anchorage, an ILEC will be treated as nondominant if its market share is 60% or less or if an unaffiliated CLEC-ETC holds 20% or more market share).

[16] Statement of Dr. Howard Shelanski in Support of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, at ¶ 26, attached hereto as Exhibit D ("Shelanski Statement"). "GCI has been so successful that *two years ago* its own senior management was already saying that the incumbent, ACS, 'is arguably no longer dominant.' Two years later, as GCI has continued to take market share while at the same time reducing its need even for UNE loops, ACS is clearly no longer dominant and GCI just as clearly remains unimpaired in providing local exchange service in the Anchorage Study Area." *Id.* (citing *Tindall Prefiled Rebuttal Testimony* at 9).

[17] *See* Meade Statement at ¶ 4.

facilities.[18] Thus, a substantial number of the customers ACS has lost in Anchorage are now served over GCI's facilities, not over UNEs. In addition to this facilities-based competition from a switched local exchange service provider, intermodal competition from wireless and VoIP providers continues to grow in the market. Further, other CLECs in the market provide local exchange services using resale of ACS's services. Due to the vitality of competition in Anchorage, ACS has an annual line loss rate of approximately 8% per year, on average over the last five years.[19] ACS has lost approximately 52% of its retail access lines through 2004,[20] significantly higher than the overall ILEC access line loss of 18.5% for the same period.[21]

A. Significant Facilities-Based Competition Exists in Anchorage

1. GCI Has as Much "Market Power" in Anchorage as ACS

ACS's primary competitor in Anchorage is GCI, which is well known in Alaska markets as the dominant incumbent cable television system operator and cable modem service provider. GCI also controls roughly half of the long-distance market in the state.[22] GCI owns two of the three major undersea cables that link Alaska to the lower 48 United States and extensive fiber facilities throughout the state of Alaska, including fiber to the premises for many customers.[23] Bolstered by its name recognition and financial resources garnered as the incumbent cable television provider and aggressive long-distance carrier throughout most of Alaska, GCI entered the Anchorage local exchange market in 1997, and quickly gained a

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[18] *See* Meade Statement at ¶¶ 9, 14.

[19] *Id.* at 8.

[20] *Id.*

[21] *See* Local Telephone Competition: Status as of December 31, 2004, Industry Analysis and Technology Division, Wireline Competition Bureau Study, at Table 1 (rel. July 8, 2005).

[22] *See* Meade Statement at ¶ 6; Comments of ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc., filed in RCA Docket No. R-03-07, at 4-5 (Jan. 12, 2004) ("ACS RCA Comments").

[23] *See* Meade Statement at ¶ 6; *see also*, ACS RCA Comments at 3.

significant share of both residential and business customers.[24] Only three years after GCI entered the local exchange market, the Commission found that ACS's predecessor, ATU Telecommunications, faced substantial competition in the Anchorage exchange access market, warranting a limited grant of pricing flexibility (the first of its kind for a rate-of-return carrier) for interstate access service.[25]

Since entering the Anchorage local exchange market, GCI has gained a market share of approximately 49 percent. ACS and GCI agree on the relative percentage of retail access lines served by each company in Anchorage. For example, as of January 2004, GCI reported serving 87,327 lines out of approximately 190,424 lines in Anchorage.[26] As of June 2005, ACS estimates based on retail line information provided to the RCA for intrastate access purposes, that GCI is serving 88,000 lines out of 182,000 lines in Anchorage.[27] This includes 51,000 lines provisioned using UNE loops and 6,000 lines provisioned via resale under Section 251(c)(4) of the Communications Act.[28] ACS estimates that GCI serves an additional 32,000

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[24] GCI is a very substantial company with the resources and experience to continue and augment its success to date, and is a considerably bigger company than Alaska Communications Systems Group, Inc. ("ACS Group"). GCI reported 2004 revenues of $424.8 million (*see* GCI Form 10-K (Dec. 31, 2004), at 114), while ACS had 2004 revenues of $320 million (*see* ACS Group Form 10-K (Dec. 31, 2004)).

[25] *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, CPD 98-40, Order, FCC 00-379 (2000).

[26] *GCI Data Response*, filed in RCA Docket No. R-03-07, at 1 (Mar. 19, 2004). Because GCI does not need to report market share information, ACS has no way of knowing GCI's exact market share, or where its customers and facilities are located. ACS estimated GCI's market share as of January 2004 as 87,000 retail lines out of approximately 190,000 total lines in Anchorage. Meade Statement at ¶ 15. Thus, ACS's estimates compare reasonably to GCI's stated market share.

[27] Meade Statement at ¶ 5. See explanation of estimates, *infra,* Section II(A)(2)(c). GCI has estimated that in Alaska, residential customers represent approximately 61 percent of its lines and business customers represent approximately 36 percent of its lines. ACS believes that this breakdown is consistent with GCI's residential/business allocation in Anchorage.

[28] Meade Statement at ¶ 9.

lines over its own fiber, cable facilities and multiplexing of ACS loops.[29] Based on GCI's public statements, 12,800 of these lines are cable loops.[30] Thus, GCI serves approximately a third of its retail lines in Anchorage over its own facilities or its own multiplexing.[31]

According to GCI, "some of its customers are served entirely over GCI's own loops (for example, about 22 buildings in Anchorage are served from GCI's fiber ring)."[32] Since GCI made this statement, ACS is aware of several new office buildings that GCI serves using its fiber ring.[33] GCI provided lists to the RCA of all its transport facilities and end points to all high capacity loops and dark fiber loops in Anchorage which show that GCI has fiber throughout Anchorage and can provision transport services to other competitors.[34] GCI has served customers over its own fiber network even before GCI deployed its cable telephony.[35] Others first were served by GCI via UNEs and are being moved to GCI's switched telephony cable plant.[36] GCI has made clear that the rate at which GCI transitions its UNE loops to its own cable telephony network is entirely dependent upon the cost of leasing ACS's UNEs.[37]

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[29] *Id.*

[30] GCI Q2 2005 Earnings Call Transcript at 2, 5 (Aug. 4, 2005), attached hereto as Exhibit F.

[31] ACS cannot calculate exact figures because it does not know the extent to which GCI multiplexes its UNE loops.

[32] Letter to William Maher, Chief, Wireline Competition Bureau, FCC, from Frederick W. Hitz, III, Director, Rates and Tariffs of GCI, Docket Nos. 01-338, 96-98, 98-147 (Nov. 21, 2002).

[33] Statement of Michael Bowman on Behalf of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, at ¶ 6, attached hereto as Exhibit B ("Bowman Statement").

[34] *See GCI Data Response* at 7, 8, Exhibit GCI-7, Exhibit GCI-8.

[35] ACS estimates that GCI has reported that it served 19,000 customers entirely over its own facilities or by multiplexing ACS loops before GCI began migrating its customers to its cable telephony platform. Meade Statement at ¶ 15.

[36] *See e.g.*, GCI Q2 2005 Earnings Call Transcript at 10 (Aug. 4, 2005).

[37] *See* GCI Q2 2004 Earnings Call Transcript at 11 (July 28, 2004) (statement of Ron Duncan). This has long been GCI's position. During the RCA's Anchorage UNE rate hearings, a GCI official stated that

GCI provides fully switched telephony over its own circuit-switched network, using a class 5 switch, unlike typical Internet-based cable telephony,[38] and has touted its cable telephony technology as equal to or better than ACS's switching network.[39] GCI is not content to serve only urban areas but is proceeding to offer telephony everywhere its cable plant reaches. GCI has applied to the RCA to provide competitive local service to eleven new service areas in Alaska, include several rural markets.[40] According to the CEO, "[GCI] expect[s] to provide competitive service to 90% of the phones in the State and I think you should assume that we'll be [sic] something close to half the market."[41]

GCI will soon complete its transition to cable telephony and plans to serve almost all of its telephone customers over its cable network.[42] As described by Economist David Blessing, numerous news articles have recently discussed the effectiveness of cable companies,

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GCI would not proceed with its plans to use its own facilities if the RCA adopted GCI's proposed UNE loop rate of $7. *See Petition of GCI for Arbitration Under Section 252 of the Communications Act of 1996 with the Municipality of Anchorage a/k/a ATU Telecommunications for the Purpose of Instituting Local Exchange Competition*, RCA Docket No. U-96-89, Testimony of Dana Tindall on Behalf of GCI, Before the Regulatory Commission of Alaska, Public Hearing, Volume X at 850 (Nov. 6, 2003) (cited and included in Comments of ACS, *In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173 (filed Dec. 16, 2003)).

[38] Bowman Statement at ¶ 12.

[39] According to the Chief Executive Officer of GCI, "when [customers] convert to DLPS [digital local phone service], they are getting a superior quality service. It converts from an analog loop to a digital loop." GCI Q3 2004 Earnings Call Transcript at 15 (Nov. 4, 2004), attached hereto as Exhibit F (statement of Ron Duncan).

[40] *See Application by GCI Communication Corp. For an Amendment to its Certificate of Public Convenience and Necessity to Operate as a Competitive Local Exchange Telecommunications Carrier*, RCA Docket No. U-05-004 (filed Jan. 21, 2005). *See also,* GCI Form 10-Q (Mar. 31, 2005), at 32-33. The eleven new service areas include the communities of Ketchikan, Cordova, Chitina, Glenallen, McCarthy, Mentasta, Tatitlek, Valdez, Delta Junction, Homer, Kenai, Kodiak, Soldotna, Nenana, North Pole, the area from Eagle River to Healy, Wrangell, Petersburg, Sitka, Seward, Bethel, and Nome.

[41] GCI Q4 2004 Earnings Call Transcript at 11 (Feb. 24, 2005), attached hereto as Exhibit F (statement of Ron Duncan).

[42] *See Tindall Prefiled Rebuttal Testimony* at 5; *GCI Data Response* at Exhibit GCI-6.

such as GCI, in providing and quickly becoming dominant in competing local telecommunications services using cable television facilities.[43] Moreover, as described more fully below, GCI serves a subset of its customers over exclusive facilities over which it is not required to give ACS or its other competitors access.[44]

2. Competitive Carriers in Anchorage Have Facilities that Duplicate ACS's Network

Competitive facilities are prevalent in the Anchorage study area. The Chair of the RCA has identified Anchorage as a "mature competitive market[]," in which there is emerging facilities-based competition.[45] The facilities of GCI and other carriers in Anchorage largely duplicate ACS's network elements: switching, interoffice transport, mass market loops, digital subscriber line ("DSL"), high capacity loops and dark fiber.

a. Switching

The Commission defines local circuit switching to include facilities that have the capability of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. The switching UNE, which is being phased out nationwide due to the Commission's finding of no impairment,[46] also includes capabilities available to the ILEC's customers, including telephone number, directory listing, dial tone, signaling and access to 911.[47] GCI has one Lucent 5E switch in Anchorage and is collocated in all five of ACS's central offices and in two locations where

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[43] Blessing Statement at 6, Exhibit DCB-2.

[44] *See* Section II(A)(2)(c), *infra.*

[45] Transcript of RCA Public Meeting, Volume I, Presentation of Chairman Kate Giard, R-03-03 (March 30, 2005). In assessing GCI's application to amend its local certificates to provide local telephone service in 11 additional areas of Alaska, Chairman Giard identified approximately 141,000 lines out of 180,000 lines that will be subject to competitive pressure with the GCI application to offer facilities-based competition. *Id.*

[46] *Triennial Review Remand Order* at ¶ 5.

[47] *Triennial Review Order* at ¶ 433.

ACS has placed remote switches.[48] GCI already provides all of its services in Anchorage with its own switch.[49] Due to the extensive nature of GCI's switching, GCI has never ordered a switching UNE from ACS in Anchorage.[50]

b. **Dedicated Transport**

Dedicated transport, for purposes of Section 251(c)(3), are those transmission facilities dedicated to a particular customer or competitive carrier that it uses for transmission among ILEC central offices and tandem offices.[51] GCI provides its own transport throughout the Anchorage study area over its extensive fiber network, including transport between its facilities collocated with ACS's facilities.[52] GCI does not order transport from ACS.[53] GCI has the ability to connect either directly or indirectly between any two ACS central offices and between ACS switches and wire centers and GCI's switch, through facilities GCI owns, controls, leases, or otherwise has obtained the right to use, from an entity other than ACS.[54] GCI also has submarine cable landing at Whittier, Alaska and long-haul fiber optic cable facilities that, with a spur to Juneau, extends to Anchorage, Valdez, and along the pipeline route to Fairbanks.

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[48] Bowman Statement at ¶¶ 3, 4; *see also, GCI Data Response*, Exhibit Anchorage Serving Areas.

[49] *The Future of Universal Service: Hearing Before The Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation* (April 2, 2003) (testimony of Dana Tindall, Sr. Vice President, Legal, Regulatory & Gov't Affairs, General Communication, Inc.), LEXIS Nexis Library, FNS File ("*Tindall Senate Testimony*")). GCI's fiber ring now serves more than 22 office buildings in Anchorage.

[50] Bowman Statement at ¶ 5.

[51] *Triennial Review Order* at ¶ 361. The Commission defines dedicated transport as ILEC "transmission facilities including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by the incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(i).

[52] *See* Bowman Statement at ¶¶ 6, 7, 11.

[53] *See* Meade Statement at ¶ 15.

[54] ACS's Reply Comments, filed in RCA Docket No. R-03-07, at 31 (Apr. 2, 2004) ("ACS RCA Reply").

c. Mass Market Loops

The core of this petition is UNE loop relief for the Anchorage market. Although ACS seeks relief from all of Section 251(c)(3) and the related pricing provisions of Section 252(d)(1), it is fundamentally loop unbundling that is affected by this petition. ACS estimates that there are 182,000 retail access lines in Anchorage. They are all DS-1, DS-0 or mass market copper loops.[55] Because the Anchorage LEC market is small, the distinction between mass market and enterprise loops is irrelevant. ACS estimates that GCI serves 51,000 customers today over UNE loops,[56] and is moving roughly 6,000 customers per quarter off ACS's loops to its own plant.

By ACS's estimates for 2005, competitors in Anchorage provide wireline service through the following means: 11,000 lines are provisioned via resale under Section 251(c)(4) and 51,000 are provisioned using UNE loops.[57] In addition, ACS estimates that GCI serves an additional 32,000 lines on its own facilities or by multiplexing ACS loops.[58] ACS believes that local exchange services provided by CLECs are evenly distributed throughout the Anchorage study area.[59] Further, GCI provided lists to the RCA of all its transport facilities and end points to all high-capacity loops and dark fiber loops in Anchorage, which show that GCI has fiber throughout Anchorage and can provision these services to other competitors.[60]

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[55] Meade Statement at ¶ 5; Bowman Statement at ¶ 10.

[56] Meade Statement at ¶ 14.

[57] Meade Statement at ¶ 9. GCI has estimated that in Alaska, residential customers represent approximately 61 percent of its lines and business customers represent approximately 36% of its lines. ACS believes that this breakdown is consistent with GCI's residential/business allocation in Anchorage. GCI Q2 2005 Earnings Call Transcript at 3.

[58] Meade Statement at ¶ 14. GCI may serve some customers over multiplexed lines, however, ACS has no way to know to the extent to which GCI multiplexes its UNE loops.

[59] *See id.* at ¶ 3.

[60] *GCI Data Response* at 7, 8, Exhibit GCI-7, Exhibit GCI-8.

ACS estimates the number of GCI's retail lines based on Carrier and Area Specific Bulk Bill ("CASBB") data reported to the RCA for intrastate access purposes and on GCI's public statements. The CASBB report provides the total number of facilities-based lines served by GCI.[61] Of these lines, ACS knows the number of UNE loops used by GCI, and subtracts this number from the total number of lines GCI reports to the RCA in order to calculate the total lines that are served on GCI's own facilities or derives by multiplexing ACS UNE loops.[62] ACS estimates the breakdown of the lines served on GCI's own facilities between fiber and cable telephony based on GCI's public statement that, as of the end of the second quarter of 2005, about 12,800 lines have been moved off of UNEs and onto its cable telephony platform, and that by the end of 2005, a total of more than 25,000 lines will be transitioned.[63]

Although GCI continues to purchase some UNE loops from ACS, GCI has substantial loop facilities of its own in the Anchorage study area.[64] GCI serves a subset of its customers over exclusive facilities over which it is not required to give ACS or its other competitors access. In Anchorage, ACS is aware of several subdivisions on Elmendorf Air Force Base and two commercial office buildings in which *only* GCI has loop facilities.[65] As a CLEC, GCI is not required to give competitors access to its facilities on an unbundled basis or at

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[61] Meade Statement at ¶ 12.

[62] The number of lines that GCI reports to the RCA may represent multiple GCI customers that are served over a single ACS UNE loop.

[63] GCI Q2 2005 Earnings Call Transcript at 2, 5 (statement of Ron Duncan, "We are maintaining the target of 25,000 by the end of the year.").

[64] *See* Bowman Statement at ¶ 8.

[65] *Id.*; *See also* Letter to William Maher, Chief, Wireline Competition Bureau, FCC, from Frederick W. Hitz, III, Director, Rates and Tariffs of GCI, Docket Nos. 01-338, 96-98, 98-147 (Nov. 21, 2002) ("*Hitz Letter*") ("In the Aurora Subdivision, Elmendorff Air Force Base, GCI has gone in to wire an area and has installed its own carrier equipment. In those areas, GCI installed GR-303 capability so that it would, in the future, have the technical ability to handle requests for unbundled loops that it might receive from other carriers.").

regulated rates. In fact, GCI has vehemently opposed ACS's request for unbundled loop reciprocity during the RCA's interconnection agreement negotiation proceedings.[66] ACS cannot reach these customers unless it builds its own loop facilities or obtains access from GCI through voluntary negotiations.[67] The benefit of competition has been that most Anchorage customers, business and residences, have a choice of facilities-based providers. The only Anchorage customers that are denied a choice are those that are being served exclusively by GCI's facilities.

Further, GCI forecasts that it will have about 30% of its Anchorage local customers on its own facilities by the end of 2005.[68] GCI's cable television plant passes nearly all of the households in Anchorage.[69] Thus, GCI already has a redundant, separate and ubiquitous last-mile telecommunications network in place in the Anchorage study area, and needs only to complete the migration of its customers from ACS's UNEs to GCI's cable network.

GCI has announced its plans to migrate virtually all of its telephone customers to its monopoly cable network over the next two years. It began with more than 8,000 customers in 2004.[70] GCI intends to accelerate this conversion over time, and according to this schedule, GCI will have migrated virtually all of its customers to its own network by the end of 2007. Given proper economic incentives, that schedule could be accelerated, and GCI could be entirely

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[66] GCI Brief, Reciprocity: The Obligations Set Forth in Section 251(c) Do Not Apply to GCI, *In the Matter of Petition by GCI for Arbitration Under Section 252 of the Communications Act of 1996 with the Municipality of Anchorage for the Purpose of Instituting Local Competition*, RCA Docket No. U-96-89 (filed May 13, 2003), attached hereto as Exhibit K.

[67] Bowman Statement at ¶ 9.

[68] GCI Q2 2005 Earnings Call Transcript at 5 (confirming that GCI maintains a target of 25,000 retail lines on DLPS).

[69] *See Tindall Prefiled Rebuttal Testimony* at 5.

[70] GCI Q4 2004 Earnings Call Transcript at 3 (Feb. 24, 2005).

independently facilities-based, with no need for any ACS UNEs, by the time the Commission acts on this petition.[71]

Moreover, GCI has demonstrated that it is capable of deploying wireless local loops in areas where it does not have access to UNE loops. GCI has indicated to the RCA that it is providing service over wireless local loops in Anchorage and plans to use this technology in rural markets where UNE loops are unavailable to CLECs pursuant to the Section 251(f) rural exemption.[72]

d. High-Capacity Loops and Dark Fiber

No CLEC has ever purchased DS-3 or dark fiber loops from ACS. In response to a data request by the RCA, GCI provided a list of end points for all high capacity loops and dark fiber loops in the Anchorage service area that GCI controls, and that could be available for the provision of service comparable to UNE DS-3 or dark fiber loop services.[73] GCI stated that it "is not currently aware of any limitations with respect to the identified facilities that would affect their use as a replacement for the incumbent's unbundled network element DS-3 and/or dark fiber services, as available at each of the customer locations listed."[74] Therefore, there is no question that any competitor would not be "impaired" in the absence of unbundled access to high-capacity or dark fiber loops.

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[71] GCI has stated that accelerating the transition is merely a business decision – a matter of money. GCI Q2 2004 Earnings Call Transcript (statement of Ron Duncan).

[72] Letter from Jimmy Jackson, GCI, to RCA Commissioners, regarding *In the Matter of the Application by GCI for an Amendment to its Certificate of Public Convenience and Necessity To Operate as a Competitive Local Exchange Telecommunications Carrier*, RCA Docket No. U-05-004 (Aug. 23, 2005), attached hereto as Exhibit G (e-mail attachment describing GCI's use of wireless local loop technology in Anchorage and markets for which GCI applies for certification); GCI Form 10-K (Dec. 31, 2004), at 78. *See also*, 47 U.S.C. § 251(f)(1)(A).

[73] *GCI Data Response* at 8.

[74] *Id.*

B. Intermodal Competition Is Robust in Anchorage

The scope of retail competition in the Anchorage market continues to expand and diversify.[75] The Chair of the Regulatory Commission of Alaska ("RCA") recently commented in a proceeding deliberating new local exchange competitive regulations in Alaska, that one of the reasons the competitive regulations were being written was to address the pressures on ILECs and CLECs that are coming from wireless and Voice-over-Internet Protocol ("VoIP"). According to Chairman Giard, "the world is now competition between internet conversations and wireless conversations, and the pressure is going to be on the traditional ILEC and CLEC to keep those rates down because people are just going to give up their lines."[76]

Today, customers can obtain effective substitutes to ILEC service using commercial wireless radio services ("CMRS"), broadband-based VoIP services and other technologies. In addition to fierce wireline competition, wireless carriers are also providing increasing retail competition in the Anchorage market. Dobson Cellular, Alaska Digitel, and ACS Wireless each provide wireless service in Anchorage. The RCA has granted Alaska Digitel eligible telecommunications carrier ("ETC") status in Anchorage, and Dobson Cellular's ETC petition currently remains pending. Both ACS and GCI have experienced line loss due to wireless competition.[77] Although it is impossible to say with certainty how many customers use wireless telephony as a substitute for wireline service, as described in the Blessing Statement,

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[75] The D.C. Circuit has instructed the Commission to consider intermodal competition as a significant factor in the unbundling context. *USTA v. FCC*, 359 F.3d 554, 572-583 (D.C. Cir. 2004) ("*USTA II*"). Additionally, in the context of Verizon's petition for forbearance from Section 271 obligations, the Commission looked at intermodal competition and the numerous emerging competitors. *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 USC § 160(c),* 19 FCC Rcd 21496, FCC 04-254, at ¶ 22 (Oct. 27, 2004)

[76] RCA Public Meeting, Volume I, R-03-03, Chairman Giard at 71 (June 8, 2005).

[77] *See, e.g.,* GCI Q1 2005 Earning Call Transcript at 11 (May 5, 2005), attached hereto as Exhibit F (statement of Ron Duncan).

there is a significant number of wireless connections serving customers in Anchorage.[78] Additionally, industry analysts project Wireless and VoIP competition to grow significantly in the coming years.[79]

C. Resellers Also Provide Competitive Choice in Anchorage

In addition to traditional facilities-based competition and intermodal competition, CLECs in Anchorage provide customers a choice of local exchange carriers through resale under Section 251(c)(4). GCI, AT&T and TelAlaska each serve customers through resale. By ACS's estimate, approximately 11,000 lines in Anchorage are served using resale.[80] ACS is not requesting forbearance from the resale obligations under Section 251(c)(4). Therefore, resale competition would not be impacted by a grant of forbearance, and competitive entry will remain available under the resale provisions.

III. THE APPLICABLE LEGAL STANDARD FOR FORBEARANCE UNDER SECTION 10 OF THE COMMUNICATIONS ACT

ACS seeks forbearance relief from Section 251(c)(3) and the related pricing provisions of Section 252(d)(1) of the Act throughout ACS's study area.[81] If the Commission determines that forbearance from the requirement to provide UNEs under Section 251(c)(3) is warranted, then it should also forbear from the UNE pricing standards of Section 252(d)(1). Section 10(a) of the Act provides that the Commission "shall" forbear from applying any provision of the Act or regulation implementing the Act to a telecommunications carrier in a particular geographic market if the Commission determines:

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[78] Blessing Statement, at 13.

[79] *Id.* at 12.

[80] Meade Statement at ¶ 9.

[81] ACS also incorporates by reference the UNE requirements and pricing provisions set forth in the Commission's rules adopted pursuant to Sections 251(c)(3) and 252(d)(1). *See, e.g.*, 47 C.F.R. §§ 51.307-51.321, 51.333.

> (1) enforcement of that regulation or statutory provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just, reasonable, and not unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary to protect consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.[82]

Additionally, Section 10(d), requires that the Commission determine that Section 251(c) is "fully implemented" before granting forbearance of any part of that section.[83] These prongs are described in further detail below. As an initial matter, forbearance from UNE obligations is the appropriate relief for ACS because, due to the small size of the Anchorage market, the specific tests for unbundling relief adopted by the Commission in its Part 51 rules cannot be met.

A. Section 10 Forbearance Is The Appropriate Form of Relief for ACS In Anchorage

Section 10 was passed to facilitate the 1996 Act's pro-competitive and deregulatory purposes.[84] As the House Committee drafting the Telecommunications Act of 1996 explained, "[g]iven that the purpose of this legislation is to shift monopoly markets to competition as quickly as possible, the Committee anticipates this forbearance authority will be a

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[82] 47 U.S.C. §160(a) (2000); *see also In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecomm. Servs.*, 17 FCC Rcd 27000, at ¶ 12 (2002).

[83] 47 U.S.C. §160(d). The Commission may forbear from all or part of a provision of the Act, including Section 251(c). *See, e.g. Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 USC § 160(c),* 19 FCC Rcd 21496, FCC 04-254, at ¶ 37 (Oct. 27, 2004) (granting forbearance from Section 271(c)(1)(B) of the Act).

[84] *See Cellular Telecomm. & Internet Assoc. v. FCC*, 330 F.3d 502, 504-05 (D.C. Cir. 2003) ("*Cellular Telecomm*"); *In the Matter of Petition for Forbearance of Iowa Telecomm. Servs., Inc. d/b/a Iowa Telecom Pursuant to 47 U.S.C. §160(C) from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on the Calls Order or a Forward Looking Cost Study*, 17 FCC Rcd 24319, at ¶ 6 (2002) (relying on the policy statement in the Telecommunications Act when interpreting the standard for forbearance).

useful tool in ending unnecessary regulation."[85] The Commission has stated "[i]n determining when to forbear from applying specific statutory or regulatory provisions, our goal, consistent with sound public policy and Congressional intent, is to deregulate wherever the operation of competitive market forces is capable of rendering regulation unnecessary."[86]

The Court of Appeals for the District of Columbia applied the principle of regulatory restraint to the unbundling context when it declared that the imposition of unbundling requirements is not "an unqualified good."[87] The court ruled, and the Commission since has conceded, that mandatory unbundling should be used as a limited tool, not a permanent handicap upon ILECs.[88]

Forbearance from UNE obligations is appropriate relief for ACS in the Anchorage market. A market the size of Anchorage could never meet the thresholds for relief adopted in the Triennial Review Order and Triennial Review Remand Order. However, the Commission foresaw that there would be markets where the relief tests could not be met, but where relief from unbundling obligations was warranted nonetheless. In its Triennial Review Remand Order, the Commission encouraged ILECs to file for forbearance from the unbundling rules where they believe that the aims of Section 251(c)(3) have been "fully implemented" and the other requirements for forbearance have been met, even where the specific tests in the Triennial

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[85] H. REPT. NO. 104-204, at 89 (1995).

[86] *Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, First Report and Order, WT Docket No. 98-100, FCC 00-311, at ¶13 (2000).

[87] *United States Telecom Assoc. v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002) ("*USTA I*") (quoting *AT&T Corp. v. Iowa Utilities Board,* 525 U.S. 366, 428-29 (1999) (Breyer, J. concurring in part and dissenting in part)), *cert denied sub nom. Worldcom, Inc. v. U.S. Telecom Assoc.*, 123 S.Ct. 1571 (2003).

[88] *USTA I,* 290 F.3d at 429 ("mandatory unbundling comes at a cost, including disincentives to research and development by both ILECs and CLECs and the tangled management inherent in shared use of a common resource . . . the Commission 'cannot, consistent with the statute, blind itself to the availability of elements outside of the incumbent's network.'").

Review Remand Order cannot be met.[89] The FCC noted that one ILEC, Qwest, has already sought such relief and it encouraged other ILECs to file similar petitions where appropriate.[90] Qwest's petition has since been granted in part.[91] As demonstrated in this Petition, the nature of the competition in Anchorage is more than sufficient to warrant forbearance from UNE obligations.

B. Enforcement of Section 251(c)(3) and the Related Pricing Standards of Section 252(d)(1) Are Not Necessary to Ensure that the Charges, Practices, Classifications, or Regulations by, for, or in Connection with that Telecommunications Carrier or Telecommunications Service Are Just, Reasonable, and Not Unreasonably Discriminatory

The first prong of the Section 10 analysis requires the Commission to determine whether continuing to subject ACS to Section 251(c)(3) bundling obligations and the related Section 252(d)(1) pricing standards is "necessary to ensure that the charges, practices, classifications, or regulations" of the relevant carrier "are just and reasonable and are not unjustly or unreasonably discriminatory."[92] "Necessary" in this context means that there must be a "strong connection" between the regulation and just and reasonable pricing.[93] "'Necessary' certainly cannot plainly mean 'absolutely required' or 'indispensable.'"[94]

According to the Commission, "competition is the most effective means of ensuring" this prong is met.[95] The Commission has repeatedly found that competition is a

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[89] *Triennial Review Remand Order* ¶ 39.

[90] *Id. See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-233 (filed Jun. 21, 2004).

[91] *See* FCC News, *FCC Grants Qwest Forbearance Relief in Omaha MSA* (rel. Sept. 16, 2005).

[92] 47 U.S.C. §160(a)(1).

[93] *See Cellular Telecomm.*, 330 F.3d at 512.

[94] *Id.* at 503.

[95] *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 USC § 160(c),* 19 FCC Rcd 21496, FCC 04-254, at ¶ 24 (Oct. 27, 2004) ("*Verizon Petition*").

deterrent to unjust and unreasonable pricing and that a carrier without market power cannot succeed in charging unjust or unreasonable rates.[96]

In granting the Bell Operating Companies ("BOCs") forbearance from Section 271 unbundling obligations for broadband elements, the Commission has emphasized the importance of competition in the *retail* broadband market. The FCC concluded that competition in the retail broadband market will pressure the BOCs to tailor their wholesale offerings to grow their share of the broadband market and thus offer customers reasonable rates.[97] The FCC found it was appropriate "to consider the wholesale market in conjunction with competitive conditions in the downstream retail broadband market."[98] The Commission examined intermodal competition and the emerging competitors at the retail level,[99] and determined that because both the retail and wholesale broadband markets were developing with new services and deployment of facilities, Section 271 unbundling was only modestly contributing to ensuring just and reasonable rates at the retail level. Without the unbundling requirements, there would be greater competitive pressure on all providers.[100] The Commission also noted the effects of unbundling

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[96] *See, e.g., In the Matter of Petition of U.S. West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 21086, at ¶ 31 (1999) ("We find that competition is the most effective means of ensuring that the charges, practices, classifications, and regulations . . . are just and reasonable, and not unjustly or unreasonably discriminatory") (*U.S. West Order*"); *In the Matter of Review of Regulatory Requirements for ILEC Broadband Telecomm. Servs.*, 17 FCC Rcd 27000, 27022 (2002) (Joint Statement of Commissioner Michael J. Copps and Commissioner Jonathan Adelstein, Concurring) ("In previous orders forbearing from tariff requirements, the Commission has rested its decision on its conclusion that carriers lacking market power could not successfully charge rates that violate the Communications Act") ("*Review of Regulatory Requirements*").

[97] *Verizon Petition* at ¶ 26.

[98] *Id.* at ¶ 21.

[99] *Id.* at ¶ 22.

[100] *Id.* at ¶ 21.

as a disincentive on ILEC investment.[101] The Commission found that the "beneficial effect of unbundling [was] small given the particular characteristics of [that] *retail* market."[102]

Further, in determining whether the first prong of the forbearance standard has been met, the market need not be fully or perfectly competitive to warrant deregulation. The Commission has found Section 10(a)(1) to be satisfied where a market, although not fully competitive, had "sufficient competition" and where the Commission had reason to believe "that the strength of competition would increase in the near future."[103] In fact, the Commission has based numerous deregulatory measures on imperfect competition.[104] Moreover, when the FCC declared AT&T to be non-dominant in 1995, AT&T still had 60% of the long-distance market.[105]

In the context of forbearance from broadband unbundling requirements, the FCC rejected the CLECs' argument that a fully competitive wholesale market is a mandatory precursor to finding that section 10(a)(1) is satisfied, regardless of the state of intermodal competition in the retail market and the effects on ILEC investment. The Commission concluded that "forbearance need not await the development of a fully competitive market when the section 10 criteria are otherwise satisfied."[106] The Commission noted that if a fully

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[101] *Id.*

[102] *Id.* (emphasis added).

[103] *In the Matter of Personal Communications Indus. Ass'n's Broadband Personal Communications Servs. Alliance's Petition for Forbearance for Broadband Personal Communication Servs.*, 13 FCC Rcd 16857, FCC 98-134, at ¶ 82 (1998) ("*PCIA Order*").

[104] *See, e.g., Triennial Review Order* at ¶ 259 (finding no impairment with respect to the high frequency portion of the loop (HFPL) even though the "nascency of local competition and the lack of viable alternatives . . . have not been completely reversed . . ."); *WorldCom v. FCC*, 238 F.3d 449, 459, 460 (upholding the FCC's decision to "rely upon an admittedly imperfect measure of competition;" "the fact that the FCC did not engage in the thorough competition analysis common in non-dominance proceedings does not render the FCC's action arbitrary and capricious.").

[105] *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 at ¶ 68 (1995).

[106] *Verizon Petition* at ¶ 28.

competitive wholesale market were required, "no amount of intermodal retail competition or investment disincentives could ever warrant forbearance."[107] Due to the existence of facilities-based competition in the Anchorage local exchange market, this reasoning is equally applicable to the case at hand. Thus, in conducting its analysis of whether this prong of the forbearance standard is met in Anchorage, the Commission should use analysis similar to that in the Section 271 broadband forbearance case.

C. Enforcement of Sections 251(c)(3) and 252(d)(2) Are Not Necessary to Protect Consumers

The analysis for the second prong of the test is virtually identical to the first prong.[108] In granting forbearance from broadband unbundling, the Commission concluded that because the BOCs had limited competitive advantages with regard to the broadband elements, the unbundling obligations were unnecessary for the protection of consumers.[109] Moreover, the Commission has determined that market forces promote more efficient incentives to invest in facilities, thereby benefiting consumers with new and better services and lower rates.[110] Even

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[107] *Id.*

[108] *See, e.g., Review of Regulatory Requirements* at ¶ 24 ("For reasons similar to those that persuade us that tariff regulation is not necessary within the meaning of section 10(a)(1), we also conclude that tariff regulation is not necessary for the protection of consumers."); *In the Matter of Petition of U.S. West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 21086, ¶ 47 (1999) (finding forbearance appropriate under Section 10(a)(2) for the same reasons that justified it under 10(a)(1)); *In the Matter of 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecomm. Carriers*, 15 FCC Rcd 9219, ¶ 125 (1999). (citing the same reasons invoked under its Section 10(a)(1) analysis when analyzing Section 10(a)(2)); *In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Servs.*, 14 FCC Rcd. 11343, at ¶ 14 (1999); *In the Matter of Cellular Telecomm. Indus. Ass'n's Petition for Forbearance from Commercial Mobile Radio Servs. Number Portability Obligations*, 14 FCC Rcd. 3092, at ¶ 22 (1999).

[109] *Verizon Petition* at ¶ 30.

[110] *In the Matter of Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum and Report, FCC 99-108, at ¶ 11 (1999) ("By definition, a new service expands the range of service options available to consumers. Because new services may benefit some customers, and existing customers may continue to purchase existing services if they find the new

when new services are designed for a subset of consumers, the Commission has found competition and consumer welfare on the whole have been enhanced.[111]

D. Forbearance from Applying the Unbundling Requirements to ACS's Network Is Consistent with the Public interest

Under the third prong of the Act's Section 10 analysis, the Commission must determine whether forbearance from applying Section 251(c)(3) unbundling requirements and Section 251(d)(1) pricing standards is "consistent with the public interest."[112] In making that public interest determination, the Commission must consider whether forbearance will "promote competitive market conditions, including the extent such forbearance will enhance competition among providers of telecommunications services."[113] A finding that forbearance will promote competition is sufficient to satisfy the public interest prong.[114]

E. "Full Implementation" of Section 251(c)(3)

Section 10 of the Act permits the FCC to forbear from Section 251(c), including the unbundling requirements of Section 251(c)(3), when it finds that section to have been "fully implemented." To date, the Commission has not interpreted "fully implemented" within the context of Section 251(c). However, the FCC should find Section 251(c)(3) "fully implemented" if the pro-competitive goals of the unbundling requirements are fulfilled and if competitors no longer would be impaired in the absence of UNEs.

In this analysis, the Commission should consider the unique characteristics of the Anchorage market. As discussed above, the Commission anticipated that there would be some

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service rate structure or rate level unattractive . . ." the second prong of the forbearance request was met).

[111] *Id.*

[112] 47 U.S.C. §160(a).

[113] 47 U.S.C. § 160(b).

[114] *Id.*

markets where the competitive thresholds in the Triennial Review and Triennial Review Remand Orders could not be met, but where forbearance may be appropriate. Thus, the test for "full implementation" of the unbundling requirements of Section 251(c)(3) should not be the same as the threshold requirements for a finding of non-impairment adopted in those Orders. The current rules by design provide relief from unbundling only in markets with significantly larger concentrations of business lines than can be found in any Anchorage wire center. Moreover, for relief from mass market loop unbundling, the most significant area of relief ACS is seeking, the Commission has *not yet specified* a test for non-impairment, and for DS-1 loops, the rules establish a minimum threshold of 60,000 business lines in a wire center[115]—a level of concentration that does not exist in Anchorage.[116] Thus, limiting forbearance to markets that meet the tests set forth in the current rules would ignore the realities of smaller markets where forbearance is the only way for the purposes of the Act to be fulfilled. The Commission should determine whether competition *in the Anchorage market* would be impaired if the requested relief is granted, regardless of the size of the wire centers or the number of collocated competitors in the market.

At least one aspect of the Triennial Review Remand Order *is* relevant to the present analysis. The Commission clarified that in assessing impairment, the FCC presumes a "reasonably efficient competitor."[117] Specifically, when evaluating whether lack of access to an ILEC network element "poses a barrier or barriers to entry . . . that are unlikely to make entry into a market uneconomic," the Commission considers whether entry is economic by a

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[115] *Triennial Review Remand Order* at ¶¶ 5, 146.

[116] *See* Meade Statement at ¶ 5. By ACS's estimate, there are only about 86,000 business lines in all of Anchorage.

[117] *Triennial Review Remand Order* at ¶¶ 5, 24-28.

hypothetical competitor acting reasonably efficiently, using reasonably efficient technology.[118] The FCC declined to make a market-specific impairment evaluation, but instead relied heavily on generalized tests, based on inferences that could be drawn from a hypothetical market.[119]

Because ACS is seeking forbearance relief only from the unbundling requirements of Section 251(c)(3), the Commission must consider only whether this subsection has been fully implemented. The narrow relief that ACS requests does not warrant an examination of the entirety of Section 251(c). The Commission should assess only whether the unbundling requirements have been fully implemented because these are the only requirements from which ACS seeks forbearance. ACS does not seek forbearance from the other 251(c) requirements—ACS will continue to fulfill its resale, interconnection and number portability obligations, for example. This application of the "fully implemented" analysis is consistent with the language of the Triennial Review Remand Order, which notes that ILECs may seek forbearance from unbundling rules in specific geographic markets "where they believe the aims of *section 251(c)(3)* have been 'fully implemented' and the other requirements for forbearance have been met."[120]

IV. ACS'S FORBEARANCE REQUEST MEETS THE STATUTORY CRITERIA SET FORTH IN SECTION 10 OF THE ACT

A. Definition of Relevant Geographic Market for Forbearance

The geographic market in which ACS seeks forbearance from Section 251(c)(3) and the related pricing provision of Section 252(d)(1) is the Anchorage LEC study area. The ACS Anchorage study area consists of nearly the same area as the Anchorage urban metropolitan

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[118] *Id.* at ¶ 26.

[119] *Id.* at ¶ 41-45.

[120] *Id.* at ¶ 39 (emphasis added).

area.[121] Thus, regulatory boundaries in this case closely follow geopolitical boundaries. The Anchorage study area served by ACS is fairly uniform in population density, topography, and development, and ACS and GCI have deployed their copper and cable facilities, respectively, throughout the area.

In considering whether a carrier possesses market power, the FCC has defined the relevant geographic market as "an area in which all customers in that area will likely face the same competitive alternatives."[122] The Anchorage LEC study area is the appropriate geographic market under this standard. All areas of the Anchorage study area are equally competitive and are subject to uniform retail rates.[123] Based on GCI's statements regarding its facilities, GCI's distribution of its fiber and cable lines largely mirrors the distribution of ACS's facilities in the study area as a whole.[124] Most customers in virtually all parts of the study area have a choice of at least two facilities-based wireline competitors, ACS and GCI, in addition to a variety of intermodal competitors. Some exceptions exist, such as those buildings where GCI has an exclusive right of access as the sole wireline provider, and customers do not have the choice of using ACS's local exchange services. For these reasons, forbearance is merited throughout the ACS Anchorage study area.

GCI's cable plant serves close to the entire Anchorage study area, and GCI is collocated in 100 percent of ACS's central office wire centers, providing GCI with the ability to serve nearly all of the customers in the Anchorage market using its own switched telephony

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[121] *See* ACS Anchorage Study Area Map; Meade Statement at ¶ 3; Bowman Statement at ¶ 3.

[122] *In the Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation to Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20016-17, at ¶ 54 (1997).

[123] *See* Meade Statement at ¶¶ 2, 3.

[124] *See* Bowman Statement at ¶ 12; *GCI Data Response* at 7, 8, Exhibit GCI-7, Exhibit GCI-8.

network.[125] GCI serves the entire customer base from a single class 5E switch.[126] As described above, GCI also has extensive fiber facilities. As stated by former FCC Chief Economist, Howard Shelanski,

> the Anchorage Study Area represents a geographic market in which GCI and ACS meaningfully compete for the overwhelming majority of customers. It comprises a market in which neither company can unilaterally raise prices in a sustained way without losing market share to the other.[127]

A smaller geographic market definition would be inappropriate.[128] For instance, a geographic market definition that groups customers into "markets" according to the ILEC wire center with which their service is associated would give competitors the incentive to limit its collocation to certain of the ILEC's wire centers in order to avoid crossing the threshold for impairment.[129] Indeed, the Commission has recognized that collocation underestimates the presence of competitors that have wholly bypassed the ILEC's facilities.[130]

Moreover, the RCA has established a single UNE loop rate and uniform retail rates for ACS's entire study area. Thus, ACS cannot set different prices for different residential

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[125] ACS Remand Comments at 4 (citing *The Future of Universal Service: Hearing Before The Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation* (April 2, 2003) (testimony of Dana Tindall, Sr. Vice President, Legal, Regulatory & Gov't Affairs, General Communication, Inc.), LEXIS Nexis Library, FNS File ("*Tindall Senate Testimony*")).

[126] ACS Remand Comments at 9.

[127] Shelanski Statement at ¶ 20.

[128] "The FCC has itself cautioned against artificially narrow market definitions. In the context of switching, the Commission stated that the market for local switching should not be defined as being so small 'that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market.' [citation omitted] The FCC's admonition with respect to switching applies more generally and implies at a minimum that local exchange markets should not be defined in such a way that artificially severs areas that could economically be served from existing facilities." Shelanski Statement at ¶ 15 (citing Triennial Review Order at ¶ 495).

[129] "[I]n the particular context of the Anchorage Study Area, narrowing the market definition to wire centers for UNE purposes would likely slow competition." *Id.* at ¶ 17.

[130] *WorldCom v. FCC*, 238 F.3d at 462.

customers within the Anchorage study area, "so the competition ACS faces protects all Anchorage customers."[131]

As a CLEC, GCI is not required to report data on its wire centers or customer locations, and thus, ACS does not have access to this data. ACS requests that the Commission compel GCI to produce information regarding its network and customers to the extent the Commission determines that such information would be relevant to its determination of the level of competition in the Anchorage market.

B. Enforcement of Sections 251(c)(3) and 252(d)(1) Is Not Necessary to Ensure that ACS's Rates and Practices Are Just, Reasonable, and Not Unreasonably Discriminatory

Due to the extremely high levels of competition in the Anchorage local exchange market, unbundling requirements and TELRIC pricing provisions are unnecessary to ensure that ACS's rates and practices are just, reasonable and not unreasonably discriminatory. Further, the existence of extensive competitive facilities in the market ensures that there would be no barriers to entry should the requested relief be granted. Even if the Commission forbears from enforcing the obligations Sections 251(c)(3) and 252(d)(1), other provisions of the Act will obligate ACS to provide retail and wholesale services at just, reasonable, and non-discriminatory rates, and ACS has strong incentives to negotiate with GCI for continued UNE revenue and mutual access to customers.

1. Competitive Market Forces Will Ensure that ACS's Retail Rates and Practices Are Just and Reasonable and Not Unreasonably Discriminatory

In Anchorage, competition in the retail local exchange market is thriving. *Every* Anchorage customer, business and residential, has a choice of facilities-based providers. ACS's

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[131] Shelanski Statement at ¶ 14.

market share has fallen to less than a 50 percent share of the Anchorage local exchange and exchange access market.[132] While GCI enjoys most of this market share, there is no evidence of barriers to entry for other CLECs and AT&T has maintained a steady market share of about 3% over the past 5 or more years.[133] At 52 percent, ACS's rate of line loss through 2004 is significantly higher than the national ILEC line loss over the same period.[134]

The Commission has held that competitors will exert disciplinary effects in their markets when "they announce their intentions to commence operations, identify the services they intend to offer, and begin soliciting business."[135] In Anchorage, GCI has surpassed this standard by not merely soliciting business, but successfully winning over half of the local exchange customers in Anchorage. Further, the retail pricing of local exchange service and the aggressive marketing and advertising efforts of both GCI and ACS illustrate the high level of competition in the market.[136] Indeed, the level and nature of competition in Anchorage exceeds the level that the Commission based its deregulatory measures in its AT&T and PCIA decisions.[137] GCI agrees, in the RCA's proceeding to detariff competitive services, that markets can be deemed competitive even before facilities-based competition exists throughout the geographic area.[138]

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[132] Meade Statement at ¶ 8. In the most recent Earnings Call, GCI estimated statewide that "[r]esidential customers represent about 61% of our lines [and] [b]usiness customers are approximately 36%." GCI Q2 2005 Earnings Call Transcript at 3 (statement of John M. Lowber).

[133] *See* Meade Statement at ¶¶ 9, 14.

[134] *See id.* at ¶ 8.

[135] *PCIA Order* at ¶ 22.

[136] *See* Blessing Statement at 4-5.

[137] *See* Section III(B), *supra*; *PCIA Order* at ¶ 82; *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 at ¶ 68 (1995).

[138] *In the Matter of Commission Review of the Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications*, GCI's Reply Comments, RCA Docket No. R-03-03 at 4 (May 19, 2005), attached hereto as Exhibit H.

With so much of the competition in Anchorage being facilities-based, GCI's and ACS's bargaining power have equalized. GCI is aggressively migrating its customers off of ACS's network and onto its own switched cable telephony network. Within two years or less, GCI expects to have ceased using ACS UNE loops. Moreover, any new entrant could get access to consumers from GCI as effectively as from ACS, but for the fact that GCI is not required to open its network to competitors.[139] Given GCI's substantial market share and extensive facilities, the regulatory asymmetry resulting from continued application of Section 251(c) is not sustainable or justifiable. Both intramodal and intermodal competition to ACS's local exchange services in the market have eliminated the need to continue regulation of UNE prices.[140]

Furthermore, in examining the exchange access services market in 2000, the Commission ruled that the level of facilities-based competition in the Anchorage market precludes ACS from engaging in predatory practices to drive out competitors.[141] The Commission granted ACS's predecessor, ATU Telecommunications, certain pricing and tariffing relief in the Anchorage market, finding, "given the level of competition that exists in the Anchorage market, the public interest could be better served by the conditional grant of the requested waiver, rather than strict adherence to the existing rules."[142] The Commission stated, "as competition develops in the access market, pricing flexibility would be necessary to avoid the potential adverse consequences of applying rules designed for monopolistic conditions to

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[139] As described below, ACS believes that granting forbearance would give GCI a greater incentive to permit access to its own network, upon request by another telecommunications carrier, because GCI and ACS would be on more even footing.

[140] Shelanski Statement at ¶ 24.

[141] *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, CPD 98-40, Order, FCC 00-379, at ¶ 21 (2000) ("*ATU Order*").

[142] *ATU Order* at ¶ 2.

competitive markets."[143] Since the Commission made that finding in 2000, competition in the Anchorage market has significantly intensified, particularly through the use of alternative facilities, making Anchorage among the most competitive local exchange markets in the country.[144] GCI has even stated its strong belief that no markets in Alaska will return to monopoly status.[145]

The Commission has recognized the D.C. Circuit's admonition in *USTA II* that, in the unbundling context, the FCC may not ignore intermodal competition.[146] In addition to competition from GCI and other CLECs, the scope of competition continues to broaden in the Anchorage market. Wireless carriers are providing increasingly stiff competition for ACS as wireless services substitute for wireline services. The Commission has cited evidence that "[i]n some areas, wireless use has begun to erode wireline revenue due to 'technology substitution,' that is, the substitution of new technologies for existing ones."[147] In its Triennial Review Order, the Commission found that "the record indicates that cable and wireless technologies are currently being used, and will likely increasingly be used, to provide loop substitutes to support

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[143] *Id.* at ¶ 17.

[144] Significantly, the Commission has deregulated pricing in markets with far less competition than the Anchorage market via its "phase II" pricing flexibility test. A "price cap" LEC may offer dedicated transport and special access services free from the FCC's rate structure and price cap rules by showing that unaffiliated competitors have collocated in at least 50% of its wire centers within an MSA or have collocated in wire centers accounting for at least 65% of the LECs revenues from the relevant services in the MSA. *Access Charge Reform, Price Cap Performance Review for LECs*, FCC 99-206, at ¶ 25 (1999).

[145] *In the Matter of Commission Review of the Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications*, GCI's Reply Comments, RCA Docket No. R-03-03 at 8 (May 19, 2005).

[146] *Verizon Petition* at ¶ 28.

[147] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Sixth Report, FCC 01-192, at 32 (2001) (citing evidence that, "[f]or some, wireless service is no longer a complement to wireline service but has become the preferred method of communication.").

services that compete with local services."[148] The Commission continued by finding that, where cable facilities are used for telephone services, "cable infrastructure serves as a replacement for loops."[149] According to the FCC's annual report on the current state of local competition, "'The threat [to the phone companies] from cable is not theoretical,' says Scott Cleland, CEO of Precursor, a research firm that serves institutional investors. 'It is real, and it is devastating.'"[150]

This substitution by intermodal services for wireline connections has added another dimension to the analysis.[151] In addition to ACS losing half of the market to CLECs, ACS also has lost customers and minutes to non-traditional carriers.[152] Accordingly, ACS's market share is overstated since it does not reflect loss of minutes and lines to wireless and/or VoIP connections.[153]

Furthermore, the RCA has found the retail local exchange market in Anchorage to be competitive and has adopted regulations under which ACS will be considered nondominant.[154] Therefore, the competitive nature of the market is sufficient to guard against ACS acting in an unreasonable or discriminatory fashion. Moreover, there is sufficient

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[148] *Triennial Review Order* at ¶ 228.

[149] *Id.* at ¶ 229.

[150] *See* Pethokoukis, James. "War of the Wires." U.S. News & World Report. Sept. 27, 2004. <http://www.usnews.com/usnews/issue/040927/tech/27cable.htm> (noting "that in Orange County, California, and Omaha, Cox [Cable] has a 40 percent market share for voice.").

[151] *See* Blessing Statement at 11-13.

[152] *Id.*

[153] *Id.*

[154] *In the Matter of Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies and Competition in Telecommunications*, Order Adopting Regulations, RCA Docket No. R-03-03 (June 22, 2005); *see* Section II, n. 15, *supra*.

competition to indicate the strength of competition will continue to grow, and retail competition will be even more robust once unbundling is no longer mandatory.[155]

As discussed in detail above, "competition is the most effective means of ensuring" that ACS's rates and practices are just, reasonable, and not unreasonably discriminatory.[156] The substantial competition in the Anchorage local exchange retail market demonstrates this prong of the forbearance test has been satisfied.[157]

2. There Are No Barriers To Competitive Entry In The Wholesale Market

GCI's facilities-based capability also will ensure that ACS's wholesale rates will remain just and reasonable and non-discriminatory. GCI will increasingly need to make decisions as to the economics of serving particular customers over ACS's plant or transitioning them to cable telephony or fiber optic cable service. Therefore, even without Section 251(c)(3) unbundling obligations and Section 252(d)(1) pricing standards, ACS has great incentive to price its UNEs at a reasonable rate to maintain its revenue stream from GCI leasing ACS's facilities, and in hopes of negotiating arrangements with GCI to gain access to GCI's facilities in areas that ACS's facilities do not reach. GCI recently acknowledged that ILECs would be motivated to enter into negotiations for UNEs voluntarily, without regulation.[158] In fact, GCI and ACS successfully negotiated just such an agreement in April 2004 for the Fairbanks and Juneau

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[155] *See* Section III(B), *supra.*

[156] *Verizon Petition* at ¶ 24.

[157] *See* Section III(B), *supra. Verizon Petition* at ¶ 24 (competition in retail market is important); *U.S. West Order* at ¶ 31 ("We find that competition is the most effective means of ensuring that the charges, practices, classifications, and regulations . . . are just and reasonable, and not unjustly or unreasonably discriminatory.").

[158] *In the Matter of Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies and Competition in Telecommunications*, GCI Reply Comments, RCA Docket No. R-03-03, at 7 (filed May 19, 2005).

markets.[159] Moreover, GCI argued that it would be forced to build more of its own facilities if UNEs were unavailable. Thus, if UNEs were not available, GCI would not be prevented from providing service.

There are no barriers to entry in the Anchorage wholesale market.[160] As described above, GCI has such extensive switching and transport facilities, it never has requested those network elements from ACS.[161] GCI has demonstrated that it can provide service without ACS's loops. GCI has employed the use of its own wireless local loops, both in Anchorage and in rural markets where the ILEC is not required to provide UNEs pursuant to the Section 251(f) rural exemption.[162] Further, GCI has exclusive loop facilities. GCI's cable telephony platform essentially duplicates ACS's wireline network, and ACS estimates that GCI already serves a significant number of its customers without the use of ACS's loops.[163] Indeed, as GCI has characterized the market, in Anchorage, there are no entry barriers, only costs of doing business. When asked about the existence of any "bottlenecks" preventing cable telephony deployment at a hastened pace, the Chief Executive Officer of GCI replied "All of them can be cured by money."[164]

Additionally, intermodal competition demonstrates that it is possible for competitors to offer service in the market without relying on ACS's network. Resale pursuant to Section 251(c)(4) of the Act also will remain an entry method for any new entrant in the future.

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[159] Meade Statement at ¶ 16.

[160] Shelanski Statement at ¶¶ 21, 23-24.

[161] *See* Sections II(A)(2)(a), II(A)(2)(b), *supra.*

[162] Letter from Jimmy Jackson, GCI, to RCA Commissioners, regarding *In the Matter of the Application by GCI for an Amendment to its Certificate of Public Convenience and Necessity To Operate as a Competitive Local Exchange Telecommunications Carrier*, RCA Docket No. U-05-004 (Aug. 23, 2005); *see also*, 47 U.S.C. § 251(f)(1)(A).

[163] *See* Bowman Statement at ¶¶ 8, 12; Meade Statement at ¶ 14.

[164] GCI Q2 2004 Earnings Call Transcript at 11 (statement of Ron Duncan).

Thus, ACS has no wholesale bottleneck in the Anchorage market. The extensive degree of facilities-based competition in the Anchorage study area is more than sufficient for the Commission to conclude that "forbearance need not await the development of a fully competitive market" because the section 10 criteria are satisfied.[165]

3. Other Provisions of the Act Provide Safeguards to Ensure that ACS's Retail Rates and Practices Are Just and Reasonable and Not Unreasonably Discriminatory

In granting prior forbearance petitions, the FCC has analyzed the extent to which other remaining provisions of the Act will provide safeguards to ensure that retail rates and practices are just and reasonable and not unreasonably discriminatory.[166] For example, in granting forbearance from certain tariffing rules, the Commission noted that Section 202 of the Act provides safeguards for consumers in areas that have been deregulated by the Commission.[167] Similarly, with regard to ACS's requested forbearance from Section 251(c)(3) unbundling requirements and the related Section 252(d)(1) pricing standards, Sections 201 and 202 of the Act still obligate ACS to provide retail and access services at just, reasonable, and non-discriminatory rates.[168] The Commission also has the authority to prescribe just and

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[165] *See Verizon Petition* at ¶ 28.

[166] *PCIA Order* at ¶ 31; *See also In the Matter of Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum and Report, 14 FCC Rcd 10840, at ¶ 10 (1999) (Sections 202, 204, 205, 208); *Petition of US West Communications for Forbearance*, 14 FCC Rcd 16252, ¶ 40 (1999) (Section 272)).

[167] *In the Matter of Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum and Report, FCC 99-108, 14 FCC Rcd 10840, at ¶ 10 (1999) (the Commission granted ITTA's request for forbearance from Part 69 and section 69.1(b), price cap and rate of return, to allow two percent carriers introduction of new exchange access services without obtaining prior permission through either waiver or petition because the FCC could still "enforce Section 202 of the Act, which prohibits unreasonable discrimination among customers and rates that are unjust and unreasonable." Further, parties could still petition the FCC to reject, or suspend and investigate, the proposed rates in the tariff introducing the new service and the FCC could investigate the rates under Section 204 or 205 or file complaints under Section 208).

[168] 47 U.S.C. §§ 201, 202.

reasonable rates for retail and access services under Section 205 and to adjudicate any allegations of unreasonable rates and practices under Section 208, even after UNE rates are no longer regulated.[169]

Thus, if the Commission were to forbear from applying Section 251(c)(3) and the related pricing provisions of Section 252(d)(1) to ACS in the Anchorage market, a framework still would exist to ensure that ACS's retail rates remain just, reasonable and not unreasonably discriminatory, even if ACS is no longer obligated to provide UNEs at regulated rates. Further, ACS is not seeking forbearance from any other provision of Sections 251(c) or 252 at this time. Therefore, its obligations to provide competitors with interconnection, collocation and discounted wholesale service for resale will not be diminished by a grant of forbearance from the unbundling requirements of the Act.

C. Consumers Will Be Protected Without Regulation Under 251(c)(3)

The analysis for this second prong of the test is virtually identical to the first prong.[170] Market forces are sufficient to ensure that ACS continues to act in a reasonable, non-discriminatory manner for the reasons stated above. Additionally, the Anchorage local exchange market has high elasticity of demand and supply. Consumers in Alaska have demonstrated a

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[169] 47 U.S.C. §§ 205, 208.

[170] *See, e.g., Review of Regulatory Requirements* at ¶ 24 ("For reasons similar to those that persuade us that tariff regulation is not necessary within the meaning of section 10(a)(1), we also conclude that tariff regulation is not necessary for the protection of consumers."); *In the Matter of Petition of U.S. West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 21086, ¶ 47 (1999) (finding forbearance appropriate under Section 10(a)(2) for the same reasons that justified it under 10(a)(1)); *In the Matter of 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecomm. Carriers*, 15 FCC Rcd 9219, ¶ 125 (1999) (citing the same reasons invoked under its Section 10(a)(1) analysis when analyzing Section 10(a)(2)); *In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Servs.*, 14 FCC Rcd. 11343, at ¶ 14 (1999); *In the Matter of Cellular Telecomm. Indus. Ass'n's Petition for Forbearance from Commercial Mobile Radio Servs. Number Portability Obligations*, 14 FCC Rcd. 3092, at ¶ 22 (1999).

willingness to change carriers and ACS's competitors have shown an ability to serve the customers that leave ACS.[171]

ACS describes in detail above the high degree of supply elasticity in Anchorage. GCI has described its ability to expand its operations to serve additional customers over its own facilities, limited only by the rate at which GCI spends the money necessary to do so.[172] Further, GCI is not the only retail competitor in Anchorage. Consumers have both intramodal and intermodal alternatives to GCI and ACS, including AT&T, TelAlaska, and Dobson Cellular. GCI has demonstrated its ability to accommodate the needs of any customer who may wish to switch their local exchange service from ACS to GCI. GCI has shown its ability to transition 525 customers in a single day.[173] GCI's extensive network facilities will ensure that, if ACS raises rates or restricts output, at a minimum, GCI will step in to meet demand. Other competitors clearly have the potential to do so as well.

The price sensitivity of Anchorage consumers and high demand elasticity in the Anchorage market are also beyond dispute. When ACS implemented a 24% retail rate increase in November 2001, GCI did not raise retail prices in response, but rather kept its rates in check, unfettered by costly dominant carrier regulation and able to rely on below-cost UNE loops for facilities. According to GCI, "following the rate increase we has a significant number of customers that wanted to switch their service to GCI."[174] GCI's Chief Executive Officer stated

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[171] *See* Blessing Statement at 6-8.

[172] GCI Q2 2004 Earnings Call Transcript at 11 (statement of Ron Duncan).

[173] Meade Statement at ¶ 11.

[174] *Investigation Into Disparities in Service Provided to Customers if a CLEC and an ILEC*, RCA Public Hearing, Vol. II, Docket U-02-97, at 288 (Oct. 22, 2002) (testimony of Gina Borland, Vice President and General Manager of Local Phone Service of GCI), attached hereto as Exhibit L. *See also, In the Matter of Commission Review of the Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in*

of the rate increase, "[w]e kind of think of it as a gift," and GCI began signing up local customers at twice the rate that it had been.[175] In other contexts, GCI has testified to the price sensitivity of Anchorage customers, attributing ACS's market share loss to its price increases in a competitive market.[176] Anchorage consumers have demonstrated a willingness to change local exchange carriers in direct response to price changes.[177] This example also underscores the supply elasticity in the Anchorage market, as GCI was able to absorb all the new customers without capacity constraint. Therefore, forbearance will not harm consumers in the market.

D. Forbearance Is In the Public Interest and Will Promote Competitive Market Conditions

The current requirement for ACS to provide UNEs to GCI at significant discounts from market prices disserves the public interest because it actually discourages GCI from investing more heavily in its own facilities. Forbearance will create far better incentives for *both* GCI and ACS to make rational market-based decisions to invest in their own facilities and to negotiate wholesale terms of access with each other where appropriate. Competing on market-based terms also will stimulate even more vigorous retail competition, increasing incentives for both carriers to provide innovative services and pricing.[178]

Telecommunications, GCI's Reply Comments, RCA Docket No. R-03-03 at 6 (May 19, 2005) ("*GCI Reply in RCA Detariffing Proceeding*").

[175] Tony Hopfinger, ACS hike sends customers packing; GCI leaves rates the same; benefits from competitor's move, Anchorage Daily News, Nov. 21, 2001, at E1 (quoting Ron Duncan).

[176] *GCI Reply in RCA Detariffing Proceeding* at 6.

[177] *See* Blessing Statement at 7-8. In granting another carrier's forbearance petition from dominant carrier rate regulation in competitive markets, the Commission stated, "In competitive markets, other service providers possess sufficient unutilized capacity enabling [the carrier's] customers to switch if [that carrier] were to charge non-competitive rates." *Comsat Corporation, Petition Pursuant to Section 10(c) for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, FCC 98-78, at ¶ 144 (1998).

[178] *See In the Matter of Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum and Report, FCC 99-108, at ¶ 12 (1999).

1. Forbearance from Section 251(c)(3) Unbundling Requirements Will Encourage Investment In New Facilities and Innovation in Retail Offerings.

The FCC has found that the "public interest is served by the development and implementation of new services."[179] In granting forbearance in the Section 271 unbundling broadband context, the FCC determined that removing broadband unbundling requirements would increase investment incentives and noted the negative effect that unbundling has of discouraging investment.[180] Further, policy-makers widely agree that the goal of the Act is to encourage facilities-based competition.[181] Therefore, once competition has taken hold, unbundling obligations must be promptly lifted.

Requiring ILECs to provide UNEs to competitors at a deep discount is a disincentive to investment in facilities-based competition, and should be discontinued as soon as competition is unimpaired in the market. The Commission has long recognized that "[w]hile unbundling can serve to bring competition to markets faster than it might otherwise develop, we are very aware that excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new

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[179] *Id.*

[180] *Verizon Petition* at ¶¶ 24, 25, 35.

[181] *See Health of the Telecommunications Sector: A Perspective From the Commissioners of the Federal Communications Commission: Hearing Before the Subcommittee on Telecomm. and the Internet of the House Committee on Energy and Commerce*, 108th Cong. 31 (2003) ("*Health of the Sector Hearing*") (prepared statement of Hon. Michael K. Powell, Chairman of the FCC) ("It has long been my view that facilities-based competition (both full and partial) has produced the most welfare for consumers (through lower prices and differential product offerings), provides for positive investment for our economy, creates jobs and provides us with valuable infrastructure alternatives in the face of threats to our homeland."); Kathleen Q. Abernathy, *The Nascent Services Doctrine*, Remarks Before the Federal Communications Bar Ass'n (July 11, 2002); Kevin J. Martin, Remarks Before the Kaufman Brothers Fifth Annual Communications Conference (Sept. 4, 2002) ("The events of [September 11th] taught us the value of having redundant and diverse facilities-based networks. . . . September 11th has only reinforced the need to promote policies that advance local competition which enable facilities-based service providers to enter the market and invest in new infrastructure").

technology."[182] Once competition has been achieved, "the very premise of [] below-cost rate ceilings will be undermined, as [ILECs'] supracompetitive profits will be eroded by Act-induced competition."[183] Thus, continuing price regulation of UNEs pursuant to Section 252(d)(1) of the Act in a competitive market disserves the public interest. Chairman Martin has acknowledged that below-market TELRIC rates create a disincentive to ILECs to invest in facilities. "The TELRIC pricing formula provides incumbent service providers with an insufficient return on new investment capital for new infrastructure."[184]

In Anchorage, the Section 251(c)(3) unbundling requirements and Section 252(d)(1) TELRIC-based UNE prices have retarded facilities investment. GCI's incentive to transition to its own network will be inhibited as long as it continues to profit from using ACS's network.[185] Moreover, ACS has a disincentive to invest in loop facilities when it has to sell its network below cost to a competitor that serves more customers than ACS does. Forbearance from unbundling requirements and TELRIC pricing standards will encourage investment in new facilities by both competitors. Market forces will promote more efficient incentives to invest in

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[182] *Triennial Review Order* at ¶ 3.

[183] *USTA II,* 359 F.3d at 573 (reminding the Commission that "[i]n competitive markets, an ILEC can't be used as a piñata").

[184] *Verizon Telephone Companies Tariff FCC Nos. 1 & 11, Transmittal No. 232*, Order, 18 FCC Rcd 1958, Statement of Commissioner Martin (2003) (*dissenting in part*).

[185] *See* Blessing Statement at 15-16.

facilities, thereby benefiting consumers with new and better services.[186] Further, rates will be driven by true competitive forces, not by regulatory assumptions or predictions.[187]

In Anchorage, new retail and wholesale services can be expected as GCI continues migrating to its own facilities. GCI launched its cable telephony technology in April of 2004, just two months before the RCA increased the loop rate that ACS could charge GCI.[188] GCI testified in the Anchorage UNE arbitration hearing that if the RCA allowed the UNE loop rate to increase, GCI would increase the pace of its facilities deployment.[189]

GCI's past behavior is a strong predictor of its likely future behavior. When UNE rates previously were increased, the competitive carrier accelerated deployment of its own facilities in Anchorage.[190] In contrast, in Juneau and Fairbanks, where ACS's sister companies voluntarily entered into an agreement with GCI whereby the ACS affiliates will provide GCI access to UNEs and UNE-P, GCI is deploying its own facilities much more slowly than in

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[186] *In the Matter of Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum and Report, 14 FCC Rcd 10840, at ¶ 11 (1999) ("By definition, a new service expands the range of service options available to consumers. . . . Because new services may benefit some customers, and existing customers may continue to purchase existing services if they find the new service rate structure or rate level unattractive . . ." the second prong of the forbearance request was met).

[187] *In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by ILECs*, Notice of Proposed Rulemaking, 18 FCC Rcd 18945, at ¶¶ 4, 6, 7 (2003) (describing the very theoretical nature of TELRIC pricing and the danger of incorrectly setting rates).

[188] *See* GCI Form 10-K(Dec. 31, 2004), at 78.

[189] *Tindall Prefiled Rebuttal Testimony* at 3. "Raising UNE rates dramatically would compel GCI to speed up the investment and deployment of its cable telephony network."

[190] When the rate GCI was mandated to pay ACS for UNE loops increased by 25%, GCI increased the percentage of its lines served by its own facilities by over 50%. "This result indicates that should ACS be allowed to charge GCI a market-based rate that is higher than the current mandated rate for UNE loops, it will not slow down GCI's deployment of its own facilities." Blessing Statement at 16.

Anchorage.[191] This strongly suggests that availability of UNEs slows GCI's deployment of its own facilities and that forbearance will stimulate investment in alternative facilities. Without mandatory unbundling at regulated rates, competitive market forces will promote more efficient incentives to invest in facilities in Anchorage.

2. Forbearance From Section 251(c)(3) Will Give the Parties Incentive to Negotiate New Wholesale Arrangements

Although ACS requests forbearance from mandatory unbundling in the Anchorage study area, ACS intends to provide access to UNEs voluntarily at negotiated market-based rates.[192] The Commission has considered such voluntary commitments to facilitate new entry as relevant and important factors in conducting a public interest analysis.[193] It is in ACS's financial self-interest to negotiate market-based terms for UNEs in Anchorage. GCI increasingly is providing telecommunications service over its own cable facilities. Because ACS desires access to GCI's facilities in areas where ACS's network does not reach, ACS has substantial incentives to negotiate reasonable rates and terms for GCI's use of ACS's facilities in order to obtain similarly reasonable access to GCI's facilities. GCI provides service to more customers in Anchorage as ACS, and GCI has built out facilities to certain residential areas and business customers where ACS has no facilities and no right of access. Because GCI has no obligation under Section 251 of the Act to allow ACS access to its traditional telecommunications facilities or cable plant, the only way for the bargaining power of the two competitors to be equalized in

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[191] *See* Meade Statement at ¶ 16; *see also, Order Approving Interconnection Agreements and Closing Dockets*, RCA Docket Nos. U-03-63(5), U-03-64(5) (Aug. 16, 2004).

[192] *See* ACS Remand Comments at 2.

[193] *See, e.g., Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20,543, 20,574 n.113 (1997); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from: MediaOne Group, Inc., Transferor, To AT&T Corp.*, Transferee, Memorandum Opinion and Order, 15 FCC Rcd 9816, 9819-20, 9873 (2000).

the Anchorage market is for ACS to obtain forbearance from unbundling obligations.[194] Then ACS would have ample incentive to continue offering network elements to GCI and GCI would continue to have access to UNEs, if GCI negotiates reasonable terms with ACS.

In addition, ACS has the incentive to negotiate with GCI because, if GCI wins a customer from ACS, ACS would rather receive UNE revenue from the CLEC than lose all revenues associated with that customer to facilities-based competition. Wholesale rates will remain reasonable following deregulation because ACS has the incentive to keep GCI and other competitors on ACS's network at rates the market can support.[195] And GCI can always resell ACS's service at regulated rates, providing an effective cap on ACS's UNE rates.

Indeed, GCI agrees that this dynamic would encourage ACS to negotiate UNEs without being forced by regulatory obligations. According to GCI, ILECs in Alaska can "reduce the financial impact of market share losses by *voluntarily* entering into an agreement to provide GCI unbundled network elements, wholesale resale, and quality service at rates that are more favorable than GCI's cost of providing service over its own facilities."[196]

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[194] Shelanski Statement at ¶ 18 ("Mandatory unbundling, however, undermines voluntary bargaining and leads to comparatively lower competition than would result without unbundling. Under a UNE mandate, GCI can avail itself of ACS's facilities at regulated rates without offering anything in return. The effects of such unbundling under the circumstances of competitive parity that exist in Anchorage would be, at best, to hasten nominal competition to some customers while leaving those customers that ACS cannot reach to be served only by GCI. The result of unbundling in this context is less competition than would otherwise exist—GCI gets mandatory access to ACS customers, but ACS does not get equivalent access to customers reached only by GCI. This asymmetric outcome is counterproductive to consumer welfare and to the goals of the 1996 Act.").

[195] In its Triennial Review Remand Order, the Commission recognized that negotiated rates may be higher than TELRIC prices, but nonetheless they would be reasonable because they are rates which the market can support. In fact, for the transitional period, the Commission set UNE rates $1 higher than the TELRIC rate. *Triennial Review Remand Order* at ¶¶ 199, 226-228.

[196] *In the Matter of Commission Review of the Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications*, GCI's Reply Comments, RCA Docket No. R-03-03 at 7 (May 19, 2005).

As noted above, ACS already has demonstrated its willingness and ability to negotiate unbundling arrangements with GCI. In Juneau and Fairbanks, ACS and GCI entered into an agreement whereby ACS will provide GCI access to UNEs and UNE-P at negotiated rates, despite changes in the law that would have made it impossible for GCI to get these terms through regulatory proceedings.[197] Thus, it is economically rational to expect, and history supports the expectation, that GCI and ACS will negotiate market-based arrangements in the absence of regulations.

E. Section 251(c) Has Been Fully Implemented In Anchorage

Section 251(c)(3) has been fully implemented in Anchorage because, as required by the Triennial Review Remand Order, the pro-competitive aims of Section 251(c)(3) have been fulfilled in Anchorage. As described above, vibrant retail competition exists in Anchorage in all market segments, for residential and business customers. Additionally, no CLEC can be deemed "impaired" without access to UNEs in Anchorage. However, if the Commission determines that Section 251(c)(3) has not been fully implemented in the Anchorage study area, at a minimum it should find that Section 251(c)(3) has been fully implemented as to GCI. In that case, ACS should have no regulatory obligation to provide UNEs to GCI at TELRIC rates.

1. The Pro-Competitive Purpose of Section 251(c)(3) Has Been Fulfilled

ACS's Anchorage study area is experiencing exactly the type of facilities-based competition that the FCC contemplated in adopting its unbundling rules. According to the D.C. Circuit, the purpose of the Act is to provide for neither the widest possible unbundling, nor the lowest prices for ILEC network elements, but to stimulate facilities-based competition; when competitors have access to necessary facilities at rates that allow competition to flourish,

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[197] *Order Approving Interconnection Agreements and Closing Dockets*, RCA Docket Nos. U-03-63(5), U-03-64(5) (Aug. 16, 2004).

mandatory unbundling is no longer justified.[198] Indeed, in Anchorage, continuing to subject ACS to mandatory unbundling requirements would contravene the goals of the Act.

Section 251(c)(3) imposes unbundling obligations on ILECs to stimulate facilities-based competitive entry. In Anchorage, the aims of Section 251(c)(3) have been fully implemented. UNEs have been available in Anchorage since 1997. Today, there is robust facilities-based competition between two carriers with nearly equal market share and equal facilities access to residences and businesses in the market.[199] GCI provides its services substantially over its own facilities and is transitioning the entirety of its local exchange services customer bases to its cable plant or its own fiber optic cable facilities, which passes nearly every residence and business in ACS's Anchorage service area. GCI has announced that it will provide service completely independent of ACS's facilities within the next eighteen months and that accelerating the transition is merely a business decision.[200] There are no barriers to entry for CLECs with or without the continued availability of UNEs.

Moreover, the presence of two comprehensive facilities-based wireline networks, multiple wireless networks, and additional fiber facilities throughout the Anchorage study area are sufficient to ensure vibrant retail competition in Anchorage in all market segments, for residential and business customers.[201] ACS has lost more than 50 percent of its access lines since the implementation of Section 251(c). Nearly all customers, business and residential, in Anchorage have a choice of facilities-based wireline carriers. Only customers served over GCI's exclusive facilities do not have a choice of wireline local exchange service providers. Indeed,

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[198] *USTA II*, 359 F.3d at 576.

[199] *See* Blessing Statement at 4-5, 7.

[200] GCI Q2 2004 Earnings Call Transcript at 11 (statement of Ron Duncan).

[201] *See* Blessing Statement at 13.

Anchorage--one of the most competitive local telecommunications markets in the country--is a prime example of a market where the aims of the Act have been achieved.[202]

2. There Is No Impairment Without Access To UNEs in Anchorage

The Supreme Court has made clear that unbundling under the 1996 Act is subject to "*some* limiting standard, rationally related to the goals of the Act." and that it could not be left up to entrants to whether unbundling is necessary to prevent competitive impairment.[203] The United States Court of Appeals later built on the Supreme Court's ruling and held that the impairment standard for unbundling was a stringent one that requires proof of more than the normal costs and disadvantages of competitive entry.[204] Based on these rulings, the Commission in its 2003 Triennial Review Order defined "impairment" as a condition in which competitive entry is "uneconomic" in the sense that the costs of entry exceed the potential revenues from entry.[205]

According to former FCC Chief Economist, Dr. Howard Shelanski, "[i]t is quite clear that for GCI, entry has been economic. The firm has aggressively and successfully pursued local exchange customers [and] . . . GCI's substantial market share in local exchange services and its rapid transitioning of its customers entirely onto its own facilities demonstrates the economic viability and success of GCI's entry."[206] Anchorage is a market that has facilities-based competition in every sector. Any impairment that GCI could try to conjure could not be

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[202] *See id.* at 9-11.

[203] *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 388, 389 (1999).

[204] *USTA v. FCC, 290 F.3d 415, 427* (D.C. Cir. 2002).

[205] *Triennial Review Order* at ¶ 84.

[206] Shelanski Statement at ¶ 23.

economically significant or sufficient to offset the well-recognized costs of unbundling.[207] Moreover, the Commission does not need to model a hypothetical, "reasonably efficient" entrant and predict its competitive prospects with and without UNEs, as clarified by the Triennial Review Remand Order, because there is nothing hypothetical about competition in Anchorage.[208] The Commission has evidence that GCI, a real firm in a real market, the Anchorage study area, has been continuing to increase its market share while reducing its reliance on UNEs.[209] Thus, mandatory unbundling cannot be justified under the Act's "necessary" and "impair" standards and all CLECs in the Anchorage study area should be found unimpaired, not just GCI.

Requiring ACS to continue to provide UNEs at regulated rates to GCI would not serve the goals of the Act and would undermine the Commission's stated goal of encouraging facilities investment for the reasons states above. As demonstrated above, perpetuating UNE access for an indefinite period would remove GCI's incentive to further build out its telecommunications facilities or to continue its ongoing transition to cable telephony.

3. ACS Requests Forbearance With Respect to GCI As An Alternative Form of Relief

ACS believes that Section 251(c) has been fully implemented for the entirety of the Anchorage study area. The purpose of this petition is to allow both ACS and its competitors to compete on market-based terms. The best way to create balanced incentives is to grant the requested forbearance so no party has the obligation to provide UNEs under Section 251(c)(3). All providers will have the incentive to negotiate reasonable terms of access to their respective

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[207] *Id.* "As the courts have made clear, any assessment of unbundling must take into account both the costs and benefits of UNE access." *Id.* at ¶ 19 (citing *USTA v. FCC*, 359 F.3d 554, 563 (D.C. Cir. 2004)).

[208] *Id.* at ¶ 23.

[209] *Id.* at ¶ 26. "The fact that a competitor using exclusively or primarily its own facilities has been so successful makes the case against impairment, and hence against unbundled access, an overwhelming one in the Anchorage Study Area." *Id.* at ¶ 5.

networks. However, if the Commission cannot determine that the unbundling requirements have been fully implemented in the Anchorage market as a whole, at a minimum it should find that Section 251(c)(3) has been fully implemented with respect to GCI. If the Commission grants this alternative form of relief, ACS should be subject to the same incentives to offer network access as GCI, promoting voluntary negotiations between the two carriers.

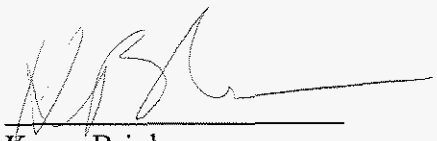
V. CONCLUSION

Based on the foregoing, ACS requests that the Commission forbear from the unbundling obligations of Section 251(c)(3) and the related pricing standard of Section 252(d)(1) of the Act as they apply to ACS's UNEs in the Anchorage study area. The statutory requirements for forbearance pursuant to Section 10 of the Act have been met and Section 251(c)(3) unbundling is unnecessary in the Anchorage study area. Competitive market forces in Anchorage will ensure that ACS's retail rates and practices are just, reasonable and nondiscriminatory, and that consumers will be protected without such regulation. Forbearance is in the public interest because market forces will promote more efficient incentives to invest in facilities for all carriers, thereby benefiting consumers with better services and lower rates. Additionally, Section 251(c)(3) has been fully implemented in the Anchorage market because the pro-competitive purpose of Section 251(c)(3) has been fulfilled in Anchorage and no CLEC in Anchorage would be "impaired" without access to ACS's UNEs.

ACS requests that the Commission compel GCI to produce information regarding its network to the extent the Commission determines that such information would be relevant to its determination of the level of competition in the Anchorage market. Further, ACS requests that if the Commission cannot find that Section 251(c)(3) has been fully implemented with respect to the entire Anchorage market, it should find that that section has been fully implemented with respect to GCI, and that GCI should be subject to the same unbundling obligations as ACS. ACS respectfully urges expedited consideration of this Petition in light of GCI's stated transition plans.

Respectfully submitted,

ACS OF ANCHORAGE, INC.



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